90-738

No. A-129

Supreme Court, U.S.
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IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1990

JOSEPH E. and JEANETTE SCHNORBUS,
RICHARD L. and GLADYS M. BENNER,
CHARLES and NORA H. FRANKS, and
SAM WHITE,

Petitioners,

vs.

DIRECTOR OF REVENUE,
STATE OF MISSOURI,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

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QUESTIONS PRESENTED

1. Whether the Director of Revenue for the State of Missouri erroneously denied Petitioners' requests for tax refunds because the scheme of discriminatory taxation adopted by the State of Missouri in taxing retirement benefits of all except governmental employees was constitutionally impermissible under the State and Federal Constitutions in that there is no rational basis for the separate classifications of governmental and non-governmental retirees.

2. Whether the Director of Revenue for the State of Missouri erroneously denied Petitioners' requests for tax refunds because the scheme of discriminatory taxation adopted by the State of Missouri in taxing retirement benefits of all except governmental employees was constitutionally impermissible under the State and Federal Constitutions in that there is no legitimate State interest to be served which may reasonably be perceived from the terms of the statute.

PARTIES TO THE PROCEEDING

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed are contained in the caption of the case in this Honorable Court.

In addition to the parties contained in the caption, amicus curiae Amalgamated Transit Union Division No. 788 and amicus curiae Oil, Chemical and Atomic Workers, Local 5-6 filed briefs in the court whose judgment is sought to be reviewed.

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IN THE
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JOSEPH E. and JEANETTE SCHNORBUS,
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SAM WHITE,

Petitioners,

vs.

DIRECTOR OF REVENUE,
STATE OF MISSOURI,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

The Petitioners respectfully pray that a writ of certiorari issue to review the Judgment and Opinion of the Supreme Court of Missouri, entered in the above-entitled proceeding on June 19, 1990.

OPINIONS BELOW

The en banc opinion of the Supreme Court of Missouri affirming the decision of the Adminis-

trative Hearing Commission, State of Missouri, is reported at 790 S.W.2d 241, No. 72096 (Mo. June 19, 1990), and is reproduced in Appendix A attached hereto.

The final decision of the Administrative Hearing Commission, State of Missouri, confirming the final order of the Director of Revenue, State of Missouri, is reproduced in Appendix C attached hereto.

The final order of the Director of Revenue, State of Missouri, denying Petitioners' claims for refunds of Missouri individual income taxes paid for the years 1986-1988, is reproduced in Appendix F attached hereto.

The decision of the Department of Revenue, State of Missouri, denying Petitioners' claims for refunds of Missouri individual income taxes paid for the years 1986-1988, is reproduced in Appendix H attached hereto.

JURISDICTION

The judgment of the Supreme Court of Missouri en banc was entered on June 19, 1990. An appli-

cation for an extension of time for which to file this Petition for a Writ of Certiorari was granted on August 27, 1990, by the Honorable Harry A. Blackmun, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit, extending the time to and including October 17, 1990. The jurisdiction of this Court to review the judgment of the Supreme Court of Missouri en banc is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1 provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws."

Mo.Const. art. I, § 2 provides:

"That all constituional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design."

Mo. Const. art. X, § 3 provides:

"Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax."

STATEMENT OF THE CASE

A. Statement of Facts

Petitioners are retired members of the Teamsters Union and their spouses who are receiving pension benefits by reason of their former employment in the private sector; i.e., by employers other than federal, state or local governments. See Appendix E, p. 1, para. 1. Their rights to pension benefits arise because of their former employment under collective bargaining agreements; and those benefits are paid by multi-employer employee benefit plans subject to regulation under federal law. See Appendix E, p. 1-2, para. 1.

On June 29, 1989 pursuant to Section 143.801 RSMo. 1986, Petitioners filed claims for refunds of Missouri individual income taxes paid claiming that taxation of their retirement benefits derived from their former employment by private nongovernmental employers, while exempting retirement benefits derived from governmental employers, was not constitutionally permissible

nder the Federal and State Constitutions. See ppendix E, p. 2, para. 2. The claims were as ollows:

Joseph E. and Jeanette Schnorbus

1986	$383.36
1987	213.00
1988	212.00

Richard L. and Gladys M. Benner

1986	290.00
1987	182.00

Charles and Nora H. Franks

1986	103.00
1987	52.00

Sam A. White

1986	360.00
1987	113.00

ee Appendix E, p. 2, para. 2. The Department f Revenue for the State of Missouri denied the laims for refunds on the same day. See Appendix E, p. 2, para. 2; Appendix H. Also on the ame day, Petitioners filed protests with the irector of Revenue for the State of Missouri ursuant to Section 143.841 RSMo. 1986. See ppendix E, p. 2, para. 2; Appendix G. The irector denied the refund requests by a final

order entered on June 29, 1989. See Appendix E, p. 2-3, para 2; Appendix F.

On July 14, 1989 Petitioners filed a timely Petition for Review of the Final Decision of the Director of Revenue with the Administrative Hearing Commission, State of Missouri, pursuant to Section 621.050 RSMo. 1986. See Appendix D. The parties submitted the case on a stipulation of facts without a hearing. See Appendix E. Petitioners' claim was and is that taxing their retirement benefits, while exempting from taxation retirement benefits of governmental employees, is constituionally impermissible under the State and Federal Constitutions. See Appendix D, p. 3, para. 3; Appendix E, p. 3, para. 4. On September 7, 1989 the Administrative Hearing Commission for the State of Missouri dismissed Petitioners' claim because it determined that it lacked jurisdiction to decide the constitutionality of the statute it was commissioned to administer. See Appendix C. The effect of that

dismissal was to sustain the Director's decision denying the refunds.

A timely Petition for Review of the Administrative Hearing Commission Findings of Fact and Conclusions of Law was filed with the Supreme Court of Missouri on September 28, 1989. See Appendix B. On June 19, 1990 the Supreme Court of Missouri en banc affirmed the decision of the Administrative Hearing Commission, State of Missouri. See Appendix A. The Missouri Supreme Court reasoned that the classifications of individuals receiving benefits are not constitutionally impermissible so long as they are not arbitrary and are supported by a rational and legitimate basis. See Appendix A.

B. Course of Proceedings and Disposition Below

From the outset, and at all subsequent stages of the litigation, Petitioners have raised in a timely and proper fashion the federal questions presented here. On June 29, 1989, Petitioners filed protests with the Director of Revenue for the State of Missouri of the denial of Petition-

rs' refund claims by the Department of Revenue, tate of Missouri, "on the basis that the tax is nconstitutional under the State and Federal onstitutions." See Appendix H. The Director f Revenue denied Petitioners' refund requests tating that "the classifications in this case o not violate the Equal Protection Clause." ee Appendix F, p. 4, 10, 16, 22.

Petitioners' contentions were reasserted in heir Petition for Review of the Decision of the irector of Revenue to the Administrative Hear- ng Commission, State of Missouri. See Appendix

"The basis for Petitioners' claims for efunds is that Petitioners who are retired from mployment in the private sector were taxed on etirement benefits in violation of Article 1, ection 2, 10, 13 and 29 and Article 10, Section of the Missouri Constitution, and the Fifth nd Fourteenth Amendments to the Constitution of he United States in that they were taxed dis- riminatorily and unequally from persons retired rom State employment without any rational

urpose or justification." See Appendix D, p. , para. 3. In addition, these contentions were tipulated to by both parties. See Appendix E, . 3, para. 4. The Administrative Hearing ommission denied Petitioners' claim because it etermined that since "Petitioners claim for a efund turns on a question of constitutional aw, it is beyond this Commission's jurisdic- ion." See Appendix C, p. 6.

Petitioners again reasserted these federal laims in their Petition for Review of Adminis- rative Decision to the Supreme Court of Missou- i. See Appendix B. "The issue which invokes he exclusive appellate jurisdiction of the issouri Supreme Court and which was raised in he proceedings below is as follows:

> Do Missouri statutes which subject the retirement benefits of private sector retirees to Missouri income taxes, while exempting the retirement benefits of state and local retirees, violate principles of equal protection of the laws and due process of law guaranteed by the Federal and State Constitutions?"

ee Appendix B, p. 3-4, para. 5. The Supreme ourt of Missouri affirmed the decision of the

Administrative Hearing Commission and held that the "classifications are not constitutionally impermissible so long as they are not arbitrary and are supported by a rational and legitimate basis." See Appendix A, p. 7. Thus, Petitioners' Federal claims were made at the earliest opportunity and were renewed and reasserted at each stage of the proceedings below.

REASONS FOR GRANTING THE WRIT

I. THE QUESTION PRESENTED IS SUBSTANTIAL

The principle issue presented by this case is whether a rational basis or legitimate state interest exists for Missouri's separate classification of governmental and nongovernmental retirees in derogation of their rights under the uniformity and equal protection of the laws provisions of the State and Federal Constitutions. This issue constitutes important questions of federal law which have not been, but should be, settled by this Court.

This Court rather recently decided Davis v. Michigan Department of Treasury, 489 U.S. 803,

09 S.Ct. 1500, 103 L.Ed.2d 891 (1989), which ealt with discriminatory taxation between etirees from state and federal government mployment. Although that decision was predi- ated on the constitutional doctrine of inter- overnmental immunity as codified in a federal tatute (4 U.S.C. § 111), this Court specifical- y recognized that "private entities or individ- als who are subjected to discriminatory taxa- ion on account of their dealings with a sover- ign [can] themselves receive the protection of he constitutional doctrine." 109 S.Ct. at 507. Further, this Court observed that the mposition of a heavier tax on one group as pposed to another "must be justified by signif- cant differences between the two classes." Id. t 1508.

In Hackman v. Director of Revenue, 711 S.W.2d 7 (Mo. banc 1989), cert. denied 110 S.Ct. 718 1990), the Missouri Supreme Court en banc found hat Davis was applicable to Missouri's system f imposing an income tax upon the retirement

enefits of federal employees while exempting rom taxation the retirement benefits of state nd municipal employees. Id. at 79. The court ound Missouri's tax laws discriminated unlaw-ully against retirees from federal government mployment and directed that refunds be made ursuant to Section 143.801.1 RSMo. 1986. Id.

The legality of the Missouri tax laws on rivate retirees was not considered until this ase came before the Supreme Court of Missouri. he court found that retirement benefits re-eived as a result of employment in the private ector are not entitled to an exemption since he "classifications are not constitutionally mpermissible so long as they are not arbitrary nd are supported by a rational and legitimate asis." See Appendix A, p. 7.

Missouri's tax scheme results in discrimina-ory treatment of taxpayers whose retirement enefits flow from private sector employment. he question of the validity of Missouri's tax cheme, in its application to private retirees,

depends on the uniformity and equal protection of the laws provisions of the State and Federal Constitutions.

A. The Missouri statute discriminates against private nongovernmental retirees in violation of the Equal Protection Clause of the State and Federal Constituions

It is a violation of the Equal Protection clauses of both the Missouri and Federal Constitutions to exempt public employee pensions from State taxation while not exempting those pensions earned by citizens in private employment. Article I, Section 2 of the Missouri Constitution reads in part: "that all persons are created equal and are entitled to equal rights and opportunities under the law." Further, the United States Constitution, Amendment XIV, Section 1 provides:

> "Section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any persons of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The equal protection clause of the United States Constitution as applicable to the State through the Fourteenth Amendment requires that discrimination in taxation must be founded upon a reasonable distinction. Kahn v. Shevin, 416 U.S. 351 (1974). States may not arbitrarily set classifications for purposes of taxation. Quaker City Cab Co. v. Commonwealth of Pennsylvania, 277 U.S. 389 (1928). A classification for tax purposes must rest upon some ground of difference having a fair and substantial relationship to the object of legislation so that those similarly situated are treated alike. Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522 (1959).

As this Court noted in Davis, when a heavier tax burden is at issue, "the relevant inquiry is whether the inconsistent tax treatment is directly related to and justified by significant differences between the two classes." Davis at 1508. As such, this Court in Davis found no rational basis for a distinction between retir-

s from state employment and retirees from deral employment. Id. at 1508. Similarly, e Supreme Court of Missouri in Hackman found basis for a rational distinction between tired state and local government employees and tired federal employees. Hackman at 78.

Likewise, there is no basis here for classi-ing retirees from public employment and retir-s from private employment separately, so far taxation of their retirement benefits is ncerned. The source of former employment eates no distinction between them. They are l retirees receiving retirement benefits, gardless of the nature of their previous ployer. In this context, the purpose which e legislature may have had in enacting the atute is of no consequence. "The State's terest in adopting the discriminatory tax, no tter how substantial, is simply irrelevant to inquiry into the nature of the two classes ceiving inconsistent treatment." Davis at 08.

When a natural class is not readily ascer-
inable, this Court has observed that reasons
stifying a discriminatory tax must bear a
asonable relationship to the purpose of the
w. F.S. Royster Guano Company v. Virginia,
3 U.S. 412 (1920). When a legitimate purpose
r a statute appears in the legislative history
is implicit in the statutory scheme itself, a
urt has some assurance that the legislature
s made a conscious policy choice. Schweiker
Wilson, 450 U.S. 221 (1981) (dissenting
inion of Powell, J.). However, at the mini-
m, this Court "consistently has required that
gislation classify the persons it affects in a
nner rationally related to legitimate gov-
nmental objectives." Id. at 230; Logan v.
mmerman Brush Co., 455 U.S. 422, 439 (1982)
pinion of Blackmun, J.). This is not a diffi-
lt standard for a state to meet, when it is
tempting to act sensibly and in good faith.
t the "rational-basis standard is 'not a
othless one,'. . .; the classificatory scheme

ust 'rationally advanc[e] a reasonable and dentifiable governmental objective'." Schweier at 235; Logan at 439. Thus, in order to ustain a challenge under equal protection of he laws principles, a discriminatory grant of enefit to one group over another must be justiiable under a perceivable legitimate governmenal interest which has some basis in the lanuage and purpose of the statute, and which is ot purely fanciful. United States Department f Agriculture v. Moreno, 413 U.S. 528 (1973); imenez v. Weinberger, 417 U.S. 628 (1974). As uch, the inquiry must focus on whether "the hallenged distinction rationally furthers some egitimate, articulated state purpose". McGinis v. Royster, 410 U.S. 263, 270 (1973) (emphais supplied).

This Court still has an obligation to view he classificatory system, in an effort to etermine whether the disparate treatment acorded the affected classes is arbitrary. inaldi v. Yeager, 384 U.S. 305, 308 (1966)

The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes.") Cf. United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 178 (1980). The inquiry here must yield an affirmative result. The object of the Missouri taxation scheme is that of persons receiving retirement benefits. Yet, retired employees from the public sector are taxed with regard to their retirement benefits while retired employees from the private sector are not. Missouri converts similarly situated retirees into dissimilarly situated ones, and then uses this distinction as the basis for its classification. This is the very essence of arbitrary state action. "[T]he Equal Protection Clause imposes a requirement of some rationality in the nature of the class singled out'. . .", and that rationality is absent here. Logan at 442.

B. The Missouri statute discriminates against private nongovernmental retirees in violation of Article X, Section 3 of the Missouri Constitution

Missouri has adopted a constitutional provi-
ion which mandates uniformity of taxation.
rticle X, Section 3 of the Missouri Constitu-
ion provides that "[t]axes may be levied and
ollected for public purposes only, and shall be
niform upon the same class or subclass of
ubjects within the territorial limits of the
uthority levying the tax." This specific
niformity provision in the Missouri Constituion
equires particularly critical appraisal of any
iscriminatory taxation.

The intent of Article X, Section 3 of the
issouri Constitution was to avoid arbitrary
iscrimination. St. Louis Union Trust Co. v.
tate, 155 S.W.2d 107, 112 (Mo. 1941), cert.
enied 314 U.S. 700 (1942). Discrimination
etween taxable subjects which properly belong
o the same class is prohibited. State v.
etropolitan St. Louis School District, 275
.W.2d 225, 234 (Mo. banc 1955). Thus, "while

classifications may be made in tax legislation, it must be a reasonable classification and there can be no discrimination between taxable subjects which properly belong to the same class." Id.

> "Taxation is not an exact science and tax acts are not to be condemned because unavoidable inequalities may result. But classification cannot be 'palpably arbitrary'. And while the General Assembly may enact statutes applicable to and classifying certain persons or property for taxation purposes, yet such classification must include all persons or objects naturally falling within the class. Constitutional class taxation must include within the established class all who belong in it and must exclude all who do not belong in it. All in each natural class must be taxed or exempted alike. A natural class may not be split. The legislature may not arbitrarily designate for taxation a portion only of a separate class and thus exclude a portion which reasonably should be included and taxed. The tax must apply alike to all naturally and reasonably within the classification set up by the statute."

State ex rel. Transport Manufacturing & Equipment Co. v. Bates, 224 S.W.2d 996, 1000 (Mo. banc 1949). Thus, the legislature may not tax a portion of those in a class and exclude from

taxation others who naturally fall within the class. Id.

The tax under consideration in this case is discriminatory in that it taxes the retirement benefits of all citizens of the State with the exception of retirees from state or local government, and since Hackman, retirees from federal government employment as well. Under the mandate of the Missouri Constitution, Article X, Section 3, the discrimination must fail the constitutional test of uniformity unless it can be said that there is a rational basis for separately classifying retirees from state and federal government employment and retirees from private employment.

The natural class, and the only reasonable classification for taxation upon retirement benefits in this case however, is that group of persons receiving retirement benefits. Thus, there is no rational basis for taxing retirement benefits of persons within the same class differently. Nor is there any basis for subdivid-

ng the class into segments of persons retired rom private employment and persons retired from ublic employment. The persons involved here re all retired citizens of Missouri; and the ource of the income being taxed in all cases is etirement benefits. Thus, all retirees in the tate who receive retirement benefits is a atural class which may not properly be split nto subclasses. Members of the same class must e treated the same. The Missouri taxation cheme irrationally distinguishes between pub- ically employed retirees versus privately mployed retirees. Therefore, the Missouri axation scheme violates Article X, Section 3 of he Missouri Constitution.

C. An important federal question is presented

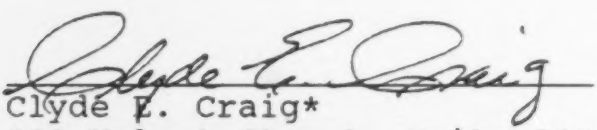
In sum, contrary to the decision below, the issouri income taxation exemption statutes must pply to all retired citizens of Missouri, hether they are governmental or nongovernmental etirees, since the source of the income being

xed in all cases is retirement benefits. A ate may not treat one more favorably for come tax purposes than another, unless there e significant differences that justify treat- g those two classes of retirees unequally. e lower court has not advanced any distinction tween governmental and nongovernmental retir- s that would qualify under this standard. erefore, the jurisdictional statement presents substantial federal question that should be solved by this Court.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned attorney for Petitioners acknowledges that three (3) copies of the Petition for Writ of Certiorari to the Supreme Court of Missouri were served on the following attorneys by first-class mail, postage prepaid on this 17 day of October, 1990:

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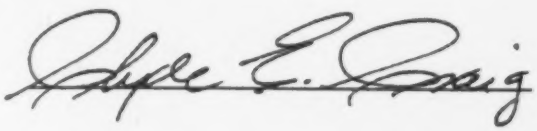

ATE OF MISSOURI)
) SS.
TY OF ST. LOUIS)

Subscribed and sworn to before me this 17th

y of October, 1990.

Christine M. Dotterer
Notary Public

Commission Expires:
October 4, 1992

APPENDIX

No. A-129

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1990

JOSEPH E. and JEANETTE SCHNORBUS,
RICHARD L. and GLADYS M. BENNER,
CHARLES and NORA H. FRANKS, and
SAM WHITE,

Petitioners,

vs.

DIRECTOR OF REVENUE,
STATE OF MISSOURI,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSOURI

APPENDIX A

SUPREME COURT OF MISSOURI
en banc

JOSEPH E. and JEANETTE SCHNORBUS, RICHARD L. and GLADYS M. BENNER, CHARLES and NORA H. FRANKS, and SAM A. WHITE,	)	DUPLICATE OF FILING ON JUN 19 1990
	)	IN OFFICE OF CLERK SUPREME COURT
Appellants,	)	
vs.	)	No. 72096
DIRECTOR OF REVENUE,	)	
Respondent.	)	

PETITION FOR REVIEW OF A DECISION OF
THE ADMINISTRATIVE HEARING COMMISSION

Honorable Paul R. Otto, Commissioner

Appellants seek relief from a decision of the Administrative Hearing Commission denying their claims for refunds of Missouri individual income taxes for the years 1986-1988. They contend that taxing retirement benefits derived from employment by private nongovernmental employers, while exempting retirement benefits

derived from governmental employers, is not constitutionally permissible.[1] In support, they assert no rational basis or legitimate state interest exists for the state's separate classification of governmental and nongovernmental retirees in derogation of their rights under the Equal Protection Clauses of the Missouri and United States Constitution. U.S. Const., amend. 14, § 1, and Mo. Const., art. I, § 2. Affirmed.

Appellants cite article X, section 3, of the Missouri Constitution, which mandates uniformity of taxation on the same class or subclass of subjects within the territorial limits of the authority levying the tax, to argue that the Missouri income tax is not being uniformly applied to the class of persons receiving retirement benefits.

---

[1] The General Assembly provides the income tax exemptions in the statutes that create the various retirement systems. See Hackman v. Director of Revenue, 771 S.W.2d 77, 79 (Mo. banc 1989).

In Mid-America Television v. State Tax Comm'n, 652 S.W.2d 674 (Mo. banc 1983), cert. denied, 465 U.S. 1065 (1983), the taxpayer raised an equal protection claim and cited article X, section 3, of the Missouri Constitution, and this Court held:

> Uniformity of taxation does not require that all subjects of taxation be taxed, and it does not mean universality; it only requires that taxes be uniform as to each class upon which they fall. . . . The power of the state to classify for the purpose of taxation is broad. For income tax purposes, the taxpayer may be classified upon the reasonable basis of legal organization or the amount or source of income.

Id. at 680. Here, taxes are uniformly applied to retirees. Retirement benefits from governmental employment are exempted from taxation. Reasonable classifications of governmental and nongovernmental retirement benefits are created. Taxes among each class are uniformly applied. Under the state's broad power to classify for the purpose of taxation, the legislature's classification of governmental and nongovernmen-

tal employees' retirement benefits is reasonable.

When the constitutionality of a statute is attacked, constitutionality is presumed, State ex rel. Missouri State Board of Registration v. Southworth, 704 S.W.2d 219, 223 (Mo. banc 1986), and the burden is upon the attacker to prove the state unconstitutional. State v. McManus, 718 S.W.2d 130, 131 (Mo. banc 1986). The standard for review for equal protection claims made under the United States Constitution is the "lenient standard of rationality." Exxon Corp. v. Eagerton, 462 U.S. 176, 195, 103 S.Ct. 2296, 76 L.Ed.2d 497 (1983). A classification will be sustained if any state of facts reasonably can be conceived to justify it. City of St. Louis v. Liberman, 547 S.W.2d 452, 458 (Mo. banc 1977).

Appellants rely on Davis v. Michigan Department of Treasury, ____ U.S. ____, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989), which held that the Michigan income tax on federal but not state

retirement benefits violated principles of intergovernmental tax immunity by favoring retired state and local government employees over retired federal employees. The Missouri Supreme Court accepted this reasoning in Hackman v. Director of Revenue, 771 S.W.2d 77 (Mo. banc 1989), finding Missouri's tax laws discriminated unlawfully against retirees from federal government employment and directing that refunds be made. Davis is inapposite to this appeal, however, because it was decided on principles of intergovernmental tax immunity, as opposed to appellants' challenge to classes of governmental employees vis-a-vis nongovernmental employees.

This case is similar to Streight v. Ragland, 655 S.W.2d 459 (Ark. 1983), where the Arkansas Supreme Court held that there was a rational basis for excluding federal and state pensions but not private pensions from state taxation. The court found that the legislature may have wanted to encourage pensioners to either remain

n Arkansas or relocate to Arkansas. Id. at 64. Here, the Missouri General Assembly may ave desired to create an additional benefit for otential employees to be attracted to governental service in Missouri or for government mployees to remain in Missouri after their etirement. Additionally, the Director of evenue showed by affidavit that the cost to the tate of exempting private pensions would be ver 68 million dollars per year and thus demontrated an economic basis not to exempt nongovrnmental employees' retirement benefits. egardless of the actual justification for the tatute, there is a rational basis for the mplementation of exemption of governmental etirement benefits, and the state has a legitiate interest in giving an exemption to former overnmental employees.

The decision to provide an exemption to ndividuals receiving governmental retirement enefits is that of the legislature and is not a ecision to be made by the courts. Streight,

55 S.W.2d at 465. These classifications are ot constitutionally impermissible so long as hey are not arbitrary and are supported by a ational and legitimate basis. The determina- ions and choices of the legislature for kinds nd types of legislation are constitutional if ational. The decision of the Administrative earing Commission is affirmed.

/s/ ANDREW JACKSON HIGGINS
ANDREW JACKSON HIGGINS, Judge

ll concur.

APPENDIX B

IN THE SUPREME COURT OF MISSOURI

JOSEPH E. and JEANETTE SCHNORBUS, RICHARD L. and GLADYS M. BENNER, CHARLES and NORA H. FRANKS, and SAM A. WHITE,	)	DUPLICATE OF FILING ON
Appellants,	)	SEP 28 1989
vs.	)	IN OFFICE OF CLERK, SUPREME COURT
DIRECTOR OF REVENUE, STATE OF MISSOURI,	)	Case No.
Respondent.	)	

PETITION FOR REVIEW OF
ADMINISTRATIVE DECISION

Come now Appellants, Joseph E. and Jeanette Schnorbus, Richard L. and Gladys M. Benner, Charles and Nora H. Franks, and Sam A. White, by attorney, and, pursuant to Article 5, Section 3 of the Constitution of the State of Missouri, Section 621.189 RSMo 1986 and Supreme Court Rule 100.02, file this Petition for Review before the Supreme Court of the State of Missouri for review of the decision of the Administrative Hearing Commission of Missouri dated September 7, 1989, and state as follows:

1. Appellants seek review of the decision and order of the Administrative Hearing Commission of the State of Missouri dated September

7, 1989 affirming the Director of Revenue's denial of applications for refunds, a copy of which is attached hereto as Exhibit A.

2. The Appellants' claims arise from the provisions of Section 143.801 RSMo 1986 which permits a taxpayer to file for refund of an overpayment of any tax imposed by Sections 143.011 to 143.996.

3. Appellants Joseph E. and Jeanette Schnorbus paid Missouri income tax for calendar years 1986, 1987 and 1988. Appellants Richard L. And Gladys M. Benner, Charles and Nora H. Franks and Sam A. White paid Missouri income tax for calendar years 1986 and 1987. Following the decision of the United States Supreme Court in Davis v. Michigan Department of Treasury, 109 S.Ct. 1500 (1989) and Hackman v. Director of Revenue, 777 S.W.2d 77 (Mo. 1989), Appellants filed for refunds for that part of their taxes which represents tax levied on Appellants' pension benefits by reason of their former employment in the private sector. These

claims for refunds were denied, and a timely appeal was filed with the Administrative Hearing Commission. A copy of the Complaint filed before the Administrative Hearing Commission seeking review of the decision of the Director of Revenue denying Appellants' applications for refunds is attached hereto as Exhibit B and incorporated herein by reference.

4. The decision and order of the Administrative Hearing Commission that was rendered on September 7, 1989 was adverse to Appellants, and Appellants have exhausted their administrative remedies. Judicial review of decisions of the Administrative Hearing Commission lies to this Court in proper circumstances. Section 621.189 RSMo 1986; Article 5, Section 3, Missouri Constitution.

5. The issue which invokes the exclusive appellate jurisdiction of the Missouri Supreme Court and which was raised in the proceedings below is as follows:

Do Missouri statutes which subject the retirement benefits of private sector retirees to Missouri income taxes, while exempting the retirement benefits of state and local retirees, violate principles of equal protection of the laws and due process of law guaranteed by the Federal and State Constitutions?

6. This Court has exclusive jurisdiction since the issue involves the construction of the revenue laws of this state. Article 5, Section 3, Missouri Constitution.

7. Findings and conclusions of the Administrative Hearing Commission and the Director of Revenue that the requested refunds not be paid were erroneous, and upon review by this Court, such findings and conclusions should be reversed.

WHEREFORE, Appellants petition this Court to assume jurisdiction over Appellants' claim and to render its decision reversing the judgment

of the Administrative Hearing Commission and the Director of Revenue, and declaring that Appellants' refunds requested pursuant to Section 143.801 RSMo 1986 be granted.

/s/ Clyde E. Craig
Clyde E. Craig, #18298
314 N. Broadway, Ste. 950
St. Louis, Missouri 63102
(314) 621-2776
Attorney for Appellants

Of Counsel:
Craig & Craig, P.C.

CERTIFICATE OF SERVICE

The foregoing Petition for Review of Administrative Decision was served on George Cox, Senior Counsel of the Department of Revenue, 301 West High Street, Room 670, Jefferson City, Missouri 65105 and the Administrative Hearing Commission, Truman State Office Building, 301 West High Street, Jefferson City, Missouri 65102, by mailing true copies thereof, correctly addressed and postage prepaid, on this 29 day of September, 1989.

/s/ Brian A. Spector

APPENDIX C

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

JOSEPH E. and JEANETTE SCHNORBUS, RICHARD L. and GLADYS M. BENNER, CHARLES and NORA H. FRANKS, and SAM A. WHITE,	)	
Petitioners,	)	Case No. RI-89-1082
vs.	)	
DIRECTOR OF REVENUE, STATE OF MISSOURI	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preliminary Statement

Petitioners have filed a complaint seeking a determination that the Respondent, Director of Revenue, should grant their respective requests for refunds of state income taxes. The parties have waived their rights to a hearing in this matter and have stipulated to certain facts. At the request of the parties, they were allowed to submit written arguments, the last of which was filed August 11, 1989. On August 15,

1989, the Director of Revenue filed a motion to reopen the record to introduce into evidence, pursuant to § 536.070(12), RSMo 1986, an affidavit executed by Donald F. Wilson on August 10, 1989. Petitioners responded by stating that they did not have any objection to the motion but "do not believe that the affidavit is relevant to any issues before the Commission." The Commission grants the motion to reopen the record for the purposes of offering the affidavit into evidence and overrules the objection to relevancy.

Findings of Fact

1. Petitioners are Joseph E. and Jeanette Schnorbus, Richard L. and Gladys M. Benner, Charles and Nora H. Franks, and Sam A. White. They are retired members of the Teamsters Union and their spouses who are receiving pension benefits by reason of their former employment in the private sector; i.e., by employers other than federal, state or local governments.

2. On June 29, 1989, Petitioners, pursuant § 143.801, RSMo 1986, filed claims with the ector of Revenue for refunds of income taxes d. The claims were paid as follows:

Joseph E. and Jeanette Schnorbus

1986	$383.36
1987	213.00
1988	221.00

Richard L. and Gladys M. Benner

1986	$290.00
1987	182.00

Charles and Nora H. Franks

1986	$103.00
1987	52.00

Sam A. White

1986	$360.00
1987	113.00

claims were denied on the same day, and o on the same day Petitioners filed protests suant to § 143.841.1, RSMo 1986. The Direc- of Revenue issued final decisions pursuant § 143.841.2, RSMo 1986, once again denying refund request.

3. There are approximately 200,000 individ- s in Missouri receiving private pensions,

th the average amount of those pensions being
,001.00. The average federal/military pen-
on benefit was $12,107.00. Therefore, the
erage private pension benefit was 58 percent
the federal/military pensioners' benefit.

4. The average refund request filed in 1989
the taxpayers who had been receiving feder-
/military pension benefits was $590.00. If
l of the 200,000 private pensioners file for
funds and if their average refund is 58 per-
nt of $590.00, the total cost to the state of
ssouri in refunds would be $68,440,000.00,
r year, exclusive of statutory interest[1].

Conclusions of Law

Petitioners receive pension benefits which
ve been subjected to state income taxation
d they now want refunds of these taxes.
eir rights to pension benefits arise because
their former employment under collective

[1]Performing the calculations and figures
ich were set forth in the Wilson affidavit,
e Commission arrived at the $68,440,000.00
gure which was $40,000.00 more than the fig-
e arrived at by Mr. Wilson.

argaining agreements, and those benefits are aid by multi-employer employee benefit plans ubject to regulation by the Employee Retire-ent Income Security Act of 1975, (ERISA), as mended, 29 U.S.C. § 1001 et seq. Petitioners laim that, because the law exempts state and ederal/military pension benefits from state ncome taxation, the failure of the law to ccord an exemption to private pension benefits uch as theirs violates certain rights of Peti-ioners as guaranteed by various provisions of he state and federal constitutions.

To give the Petitioners' the relief which hey want would require a declaration of law hat the present statutory scheme of exemptions s unconstitutional. The Supreme Court of issouri has held that such declarations of law annot be made by quasi-judicial administrative ribunals, such as this Commission, but only by ourts established under Article V of the Mis-ouri Constitution. State Tax Commission v. dministrative Hearing Commission, 641 S.W.2d

59 (Mo. banc 1982), and City of Joplin v. Industrial Commission of Missouri, 329 S.W.2d 687 (Mo. banc 1959).

Because we must apply the state income tax law statutes as they exist, this Commission denies Petitioners' requests for state income tax refunds since there is no exemption for private pension benefits provided for the tax years in question.

Summary

This Commission determines that because Petitioners' claim for a refund turns on a question of constitutional law, it is beyond this Commission's jurisdiction; therefore, this Commission decides for the Director of Revenue.

Wherefore, it is hereby ordered that Petitioners' complaint be dismissed from this Commission's docket this 7 day of September, 1989.

/s/ PAUL R. OTTO
PAUL R. OTTO
Commissioner

RO/jrh

APPENDIX D

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

)SEPH E. and JEANETTE :HNORBUS, RICHARD L. nd GLADYS M. BENNER, HARLES and NORA H. RANKS, and SAM A. HITE,	F I L E D
Petitioners,	JUL 14 1989
vs.	ADMINISTRATIVE HEARING COMMISSION
IRECTOR OF REVENUE, TATE OF MISSOURI,	Case No. RI-89-1082
Respondent.	

PETITION FOR REVIEW OF
A FINAL DECISION OF
THE DIRECTOR OF REVENUE

Come now Petitioners, by attorney, and, ursuant to Section 621.050 RS Mo 1986, appeal rom the final decisions of the Director of evenue denying Petitioners' applications for efunds of income taxes. As grounds for said ppeal, Petitioners state:

1. On June 29, 1989, pursuant to Section 143.801 RS Mo 1986, Petitioners filed claims for refunds of income taxes paid. The claims were as follows:

Joseph E. and Jeanette Schnorbus

1986	$383.36
1987	213.00
1988	221.00

Richard L. and Gladys M. Benner

1986	$290.00
1987	182.00

Charles and Nora H. Franks

1986	$103.00
1987	52.00

Sam A. White

1986	$360.00
1987	113.00

The claims were denied on the same day, and also on the same day Petitioners filed protests pursuant to Section 143.841-1 RS Mo 1986, and the Director of Revenue issued final decisions pursuant to Section 143.841-2 RS Mo 1986. The

Director's final decisions are attached hereto as Exhibits A, B, C and D and made a part hereof.

2. This Commission has jurisdiction by reason of Section 621.050 RS Mo 1986.

3. The basis for Petitioners' claims for refunds is that Petitioners who are retired from employment in the private sector were taxed on retirement benefits in violation of Article 1, Sections 2, 10, 13 and 29 and Article 10, Section 3 of the Missouri Constitution, and the Fifth and Fourteenth Amendments to the Constitution of the United States in that they were taxed discriminatorily and unequally from persons retired from State employment without any rational purpose or justification.

WHEREFORE, Petitioners pray that the final decisions of the Director of Revenue be reviewed and set aside, and that the refunds be granted.

Respectfully submitted,

/s/ Clyde E. Craig
Clyde E. Craig
314 N. Broadway, Suite 950
St. Louis, Missouri 63102
(314) 621-2776

Attorney for Petitioners

Of Counsel:

Craig & Craig, P.C.

APPENDIX E

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

)SEPH E. and JEANETTE) CHNORBUS, RICHARD L.) nd GLADYS M. BENNER,) HARLES and NORA H.) RANKS, and SAM A.) HITE,)) Petitioners,)) vs.)) IRECTOR OF REVENUE,) TATE OF MISSOURI)) Respondent.)	F I L E D JUL 14 1989 ADMINISTRATIVE HEARING COMMISSION Case No. RI-89-1082

JOINT STIPULATION
OF UNCONTESTED FACTS

The parties hereby stipulate and agree as ollows:

1. Petitioners Joseph E. and Jeanette chnorbus, Richard L. and Gladys M. Benner, harles and Nora H. Franks, and Sam A. White re retired members of the Teamsters Union and heir spouses who are receiving pension bene- its by reason of their former employment in he private sector; i.e., by employers other han federal, state or local governments. heir rights to pension benefits arise because f their former employment under collective argaining agreements, and those benefits are

ubject to regulation by the Employee Retire-
ent Income Security Act of 1974, (ERISA), as
mended, 29 U.S.C. § 1001 et seq.

2. On June 29, 1989 Petitioners, pursuant
o Section 143.801 RS Mo 1986, filed claims for
efunds of income taxes paid. The claims were
s follows:

Joseph E. and Jeanette Schnorbus

1986	$383.36
1987	213.00
1988	221.00

Richard L. and Gladys M. Benner

1986	$290.00
1987	182.00

Charles and Nora H. Franks

1986	$103.00
1987	52.00

Sam A. White

1986	$360.00
1987	113.00

The claims were denied on the same day, and
also on the same day Petitioners filed protests
pursuant to Section 143.841-1 RS Mo 1986, and
the Director of Revenue issued final decisions

ursuant to Section 143.841-2 RS Mo 1986. The irector's final decisions are attached hereto s Exhibits A, B, C and D and made a part here- f.

3. This Commission has jurisdiction over his appeal by reason of Section 621.050 RS Mo 986.

4. The basis upon which Petitioners claim o be entitled to refunds is that they were axed on their retirement benefits although ersons retired from State employment were not axed on their retirement benefits, and Peti- ioners claim that this violates Article 1, ections 2, 10, 13 and 29 and Article 10, Sec- ion 3 of the Missouri Constitution, and the ifth and Fourteenth Amendments to the Consti- ution of the United States in that they con- ider themselves to have been taxed discrimina- orily and unequally without any rational pur- ose or justification.

5. The parties hereby waive hearing and notice of hearing, and agree that the matter may be submitted to the Commission on the basis of this Joint Stipulation of Uncontested Facts without any further testimony or evidence; and the parties further agree that the Commission shall be empowered to render its decision on the basis of this record.

Signed at Jefferson City, Missouri on this 14th day of July, 1989.

/s/ Clyde E. Craig
Clyde E. Craig
314 North Broadway
Suite 950
St. Louis, MO 63102
(314) 621-2776

Attorney for Petitioners

/s/ George Cox
George Cox, Assistant General Counsel
Director of Revenue
301 West High Street
Jefferson City, MO 65105

Attorney for Respondent

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

JOSEPH E. and JEANETTE SCHNORBUS, RICHARD L. and GLADYS M. BENNER, CHARLES and NORA H. FRANKS, and SAM A. WHITE, Petitioners, vs. DIRECTOR OF REVENUE, STATE OF MISSOURI, Respondent.	F I L E D JUL 14 1989 ADMINISTRATIVE HEARING COMMISSION Case No. RI-89-1082

STIPULATION TO WAIVE
NOTICE OF HEARING

The parties hereby stipulate to waive the 20 day notice of hearing in view of the fact that they intend to submit this case on a joint stipulation of facts and no hearing will be required.

Signed at Jefferson City, Missouri on this 14th day of July, 1989.

/s/ Clyde E. Craig
Clyde E. Craig
314 North Broadway
Suite 950
St. Louis, MO 63102
(314) 621-2776

Attorney for
Petitioners

/s/ George Cox
George Cox, Assistant
General Counsel
Director of Revenue
301 West High Street
Jefferson City, MO
65105

Attorney for
Respondent

APPENDIX F

THE MISSOURI DEPARTMENT OF REVENUE

JOSEPH E. AND JEANETTE SCHNORBUS,	89-I-16
CLAIM FOR REFUND	INDIVIDUAL INCOME TAX FINAL DECISION
YEARS: 1986, 1987 and 1988	F I L E D
	JUL 14 1989
	ADMINISTRATIVE HEARING COMMISSION

FINDINGS OF FACT

The Taxpayers paid their 1986, 1987 and 1988 Missouri individual income tax in the normal manner, including income received from Teamsters Union pension benefits as income. The Missouri statutes during this period exempted pension benefits received from state and municipal pensions. Pursuant to Davis v. Michigan Dep't of Treas., 109 S.Ct. 1500 (1989) and Hackman v. Director of Revenue, No. 71620 (Mo. May 25, 1989), those individuals receiving federal pensions were declared entitled to refunds for tax years 1985-1988 pursuant to 4

U.S.C. § 111. Beginning July 1, 1989, Missouri law exempted certain portions of state, municipal and federal pension benefits.

The Taxpayers assert that the Equal Protection Clause of the fourteenth amendment of the United States Constitution does not permit Missouri to tax "private" pension benefits while exempting "public" pension benefits. Accordingly, the Taxpayers have filed amended returns, requesting refunds paid for tax years 1986, 1987 and 1988. The amount claimed is as follows:

YEAR	AMOUNT
1986	$383.36
1987	213.00
1988	221.00

BASIS FOR DECISION

Missouri laws regarding the taxation of pension benefits do not adversely affect a fundamental interest, nor do they contain a classification based on suspect criterion, therefore, the statutes are reviewed under "the lenient standard of rationality that this Court

as traditionally applied to considering equal protection challenges to regulation of economic and commercial matters." Exxon Corp. v. Eagerton, 462 U.S. 176, 195-6, 103 S.Ct. 2296, 2308, 76 L.Ed.2d 497 (1983). The statutory scheme will be upheld if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose. Id. Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 75 L.Ed.2d 129 (1983). The burden of proof is upon the taxpayer, Streight v. Ragland, 655 S.W.2d 459 (Ark. 1983).

In Streight v. Ragland, the Arkansas Supreme Court was faced with the identical challenge raised by the Taxpayers in this case. Private retired taxpayers brought an action challenging the constitutionality of state income tax exemptions on retirement income of state and

federal pensioners. That court unanimously held that the Arkansas method of taxation of pension benefits was constitutional, finding a rational basis in the legislation. Reasons advanced for this were (1) the legislature encouraging citizens to seek government employment, thus providing another fringe benefit over those that might be available, and (2) to encourage government pensioners to relocate and/or remain in the state after retirement, 655 S.W.2d at 464.

Plainly, the same reasons support the Missouri scheme of taxation. So long as <u>any</u> rational basis exists, the scheme must be upheld against challenge. Nothing has been provided by the Taxpayers that would suggest that the decision of the Arkansas Supreme Court is in correct. Based upon that decision, and the failure of the Taxpayers to meet their burden of proof, the classifications in this case do not violate the Equal Protection Clause. This

is made even more clear from study of other Missouri cases considering Equal Protection in a taxation context, Associated Industries of Mo. v. State Tax Comm'n, 722 S.W.2d 916 (Mo. banc 1987), app. dis'd 107 S.Ct. 3254 (1987) (classification of types of real property); Conners v. Leachman, 740 S.W.2d 376 (Mo. App. 1987); City of St. Louis v. Liberman, 547 S.W.2d 452, 458 (Mo. banc 1977) cert. den. 434 U.S. 832 (1977); Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1953) (not violative of Equal Protection for St. Louis earnings tax to establish different classifications of income); Bacon v. Ranson, 56 S.W.2d 786 (Mo. 1933) (graduated income tax rate is not violative of Equal Protection).

DECISION

Based upon the above, the amended return/refund request filed by Taxpayers is denied.

If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a

petition with the Administrative Hearing Commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail, it will be deemed filed on the date it is received by the Commission.

/s/ Duane Benton
Duane Benton
Director of Revenue

Dated: June 29, 1989

THE MISSOURI DEPARTMENT OF REVENUE

RICHARD L. & GLADYS M. BENNER,	89-I-15
CLAIM FOR REFUND	INDIVIDUAL INCOME TAX FINAL DECISION
YEARS: 1986 and 1987	

F I L E D

JUL 14 1989

ADMINISTRATIVE HEARING COMMISSION

FINDINGS OF FACT

The Taxpayers paid their 1986 and 1987 Missouri individual income tax in the normal manner, including income received from Teamsters Union pension benefits as income. The Missouri statutes during this period exempted pension benefits received from state and municipal pensions. Pursuant to Davis v. Michigan Dep't of Treas., 109 S.Ct. 1500 (1989) and Hackman v. Director of Revenue, No. 71620 (Mo. May 25, 1989), those individuals receiving federal pensions were declared entitled to refunds for tax years 1985-1988 pursuant to 4 U.S.C. § 111.

beginning July 1, 1986, Missouri law exempted certain portions of state, municipal and federal pension benefits.

The Taxpayers assert that the Equal Protection Clause of the fourteenth amendment of the United States Constitution does not permit Missouri to tax "private" pension benefits while exempting "public" pension benefits. Accordingly, the Taxpayers have filed amended returns, requesting refunds paid for tax years 1986 and 1987. The amount claimed is as follows:

YEAR	AMOUNT
1986	$290.00
1987	182.00

FACTS FOR DECISION

Missouri laws regarding the taxation of pension benefits do not adversely affect a fundamental interest, nor do they contain a classification based on suspect criterion, therefore, the statutes are reviewed under "the lenient standard of rationality that this Court has traditionally applied to considering equal

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protection challenges to regulation of economic and commercial matters." Exxon Corp. v. Eagerton, 462 U.S. 176, 195-6, 103 S.Ct. 2296, 2308, 76 L.Ed.2d 497 (1983). The statutory scheme will be upheld if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose. Id. Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 75 L.Ed.2d 129 (1983). The burden of proof is upon the taxpayer, Streight v. Ragland, 655 S.W.2d 459 (Ark. 1983).

In Streight v. Ragland, the Arkansas Supreme Court was faced with the identical challenge raised by the Taxpayers in this case. Private retired taxpayers brought an action challenging the constitutionality of state income tax exemptions on retirement income of state and federal pensioners. That court unanimously

held that the Arkansas method of taxation of pension benefits was constitutional, finding a rational basis in the legislation. Reasons advanced for this were (1) the legislature encouraging citizens to seek government employment, thus providing another fringe benefit over those that might be available, and (2) to encourage government pensioners to relocate and/or remain in the state after retirement, 655 S.W.2d at 464.

Plainly, the same reasons support the Missouri scheme of taxation. So long as <u>any</u> rational basis exists, the scheme must be upheld against challenge. Nothing has been provided by the Taxpayers that would suggest that the decision of the Arkansas Supreme Court is incorrect. Based upon that decision, and the failure of the Taxpayers to meet their burden of proof, the classifications in this case do not violate the Equal Protection Clause. This is made even more clear from study of other Missouri cases considering Equal Protection in

taxation context, Associated Industries of
. v. State Tax Comm'n, 722 S.W.2d 916 (Mo.
nc 1987), app. dis'd 107 S.Ct. 3254 (1987)
lassification of types of real property);
nners v. Leachman, 740 S.W.2d 376 (Mo. App.
87); City of St. Louis v. Liberman, 547
W.2d 452, 458 (Mo. banc 1977) cert. den. 434
S. 832 (1977); Walters v. City of St. Louis,
7 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1953)
ot violative of Equal Protection for St.
uis earnings tax to establish different clas-
fications of income); Bacon v. Ranson, 56
W.2d 786 (Mo. 1933) (graduated income tax
te is not violative of Equal Protection).

DECISION

Based upon the above, the amended return/ fund request filed by Taxpayers is denied.

If you were adversely affected by this deci-on, you may appeal to the Administrative aring Commission. To appeal, you must file a tition with the Administrative Hearing Com-ssion within thirty days after the date this

ecision was mailed or the date it was deliv-
red, whichever date was earlier. If any such
etition is sent by registered mail, it will be
eemed filed on the date it is mailed; if it is
ent by any method other than registered mail,
t will be deemed filed on the date it is re-
eived by the Commission.

/s/ Duane Benton
Duane Benton
Director of Revenue

ated: June 29, 1989

THE MISSOURI DEPARTMENT OF REVENUE

HARLES AND NORA H. RANKS,	)	89-I-17
LAIM FOR REFUND	)	INDIVIDUAL INCOME TAX FINAL DECISION
EARS: 1986 and 1987	)	

F I L E D

JUL 14 1989

ADMINISTRATIVE HEARING COMMISSION

FINDINGS OF FACT

The Taxpayers paid their 1986 and 1987 Missouri individual income tax in the normal manner, including income received from Teamsters Union pension benefits as income. The Missouri statutes during this period exempted pension benefits received from state and municipal pensions. Pursuant to Davis v. Michigan Dep't of Treas., 109 S.Ct. 1500 (1989) and Hackman v. Director of Revenue, No. 71620 (Mo. May 25, 1989), those individuals receiving federal pensions were declared entitled to refunds for tax years 1985-1988 pursuant to 4 U.S.C. § 111. Beginning July 1, 1989, Missouri law exempted

ertain portions of state, municipal and feder-
l pension benefits.

The Taxpayers assert that the Equal Protec-
ion Clause of the fourteenth amendment of the
nited States Constitution does not permit
issouri to tax "private" pension benefits
hile exempting "public" pension benefits.
ccordingly, the Taxpayers have filed amended
eturns, requesting refunds paid for tax years
986 and 1987. The amount claimed is as fol-
ows:

YEAR	AMOUNT
1986	$103.00
1987	52.00

BASIS FOR DECISION

Missouri laws regarding the taxation of
ension benefits do not adversely affect a
undamental interest, nor do they contain a
lassification based on suspect criterion,
herefore, the statutes are reviewed under "the
enient standard of rationality that this Court
as traditionally applied to considering equal
rotection challenges to regulation of economic

and commercial matters." Exxon Corp. v. Eagerton, 462 U.S. 176, 195-6, 103 S.Ct. 2296, 2308, 76 L.Ed.2d 497 (1983). The statutory scheme will be upheld if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose. Id. Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 75 L.Ed.2d 129 (1983). The burden of proof is upon the taxpayer, Streight v. Ragland, 655 S.W.2d 459 (Ark. 1983).

In Streight v. Ragland, the Arkansas Supreme Court was faced with the identical challenge raised by the Taxpayers in this case. Private retired taxpayers brought an action challenging the constitutionality of state income tax exemptions on retirement income of state and federal pensioners. That court unanimously held that the Arkansas method of taxation of

pension benefits was constitutional, finding a rational basis in the legislation. Reasons advanced for this were (1) the legislature encouraging citizens to seek government employment, thus providing another fringe benefit over those that might be available, and (2) to encourage government pensioners to relocate and/or remain in the state after retirement, 655 S.W.2d at 464.

Plainly, the same reasons support the Missouri scheme of taxation. So long as any rational basis exists, the scheme must be upheld against challenge. Nothing has been provided by the Taxpayers that would suggest that the decision of the Arkansas Supreme Court is incorrect. Based upon that decision, and the failure of the Taxpayers to meet their burden of proof, the classifications in this case do not violate the Equal Protection Clause. This is made even more clear from study of other Missouri cases considering Equal Protection in a taxation context, Associated Industries of

Mo. v. State Tax Comm'n, 722 S.W.2d 916 (Mo. banc 1987), app. dis'd 107 S.Ct. 3254 (1987) (classification of types of real property); Conners v. Leachman, 740 S.W.2d 376 (Mo. App. 1987); City of St. Louis v. Liberman, 547 S.W.2d 452, 458 (Mo. banc 1977) cert. den. 434 U.S. 832 (1977); Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1953) (not violative of Equal Protection for St. Louis earnings tax to establish different classifications of income); Bacon v. Ranson, 56 S.W.2d 786 (Mo. 1933) (graduated income tax rate is not violative of Equal Protection).

DECISION

Based upon the above, the amended return/refund request filed by Taxpayers is denied.

If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within thirty days after the date this

decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail, it will be deemed filed on the date it is received by the Commission.

/s/ Duane Benton
Duane Benton
Director of Revenue

Dated: June 29, 1989

THE MISSOURI DEPARTMENT OF REVENUE

SAM A. WHITE	)	89-I-16
	)	
CLAIM FOR REFUND	)	INDIVIDUAL INCOME TAX
	)	FINAL DECISION
YEARS: 1987 and 1987	)	

F I L E D

JUL 14 1989

ADMINISTRATIVE HEARING COMMISSION

FINDINGS OF FACT

The Taxpayers paid their 1986 and 1987 Missouri individual income tax in the normal manner, including income received from Teamsters Union pension benefits as income. The Missouri statutes during this period exempted pension benefits received from state and municipal pensions. Pursuant to Davis v. Michigan Dep't of Treas., 109 S.Ct. 1500 (1989) and Hackman v. Director of Revenue, No. 71620 (Mo. May 25, 1989), those individuals receiving federal pensions were declared entitled to refunds for tax years 1985-1988 pursuant to 4 U.S.C. § 111. Beginning July 1, 1989, Missouri law exempted

certain portions of state, municipal and federal pension benefits.

The Taxpayers assert that the Equal Protection Clause of the fourteenth amendment of the United States Constitution does not permit Missouri to tax "private" pension benefits while exempting "public" pension benefits. Accordingly, the Taxpayers have filed amended returns, requesting refunds paid for tax years 1986 and 1987. The amount claimed is as follows:

YEAR	AMOUNT
1986	$360.00
1987	113.00

BASIS FOR DECISION

Missouri laws regarding the taxation of pension benefits do not adversely affect a fundamental interest, nor do they contain a classification based on suspect criterion, therefore, the statutes are reviewed under "the lenient standard of rationality that this Court has traditionally applied to considering equal protection challenges to regulation of economic

and commercial matters." Exxon Corp. v. Eagerton, 462 U.S. 176, 195-6, 103 S.Ct. 2296, 2308, 76 L.Ed.2d 497 (1983). The statutory scheme will be upheld if the legislature could have reasonably concluded that the challenged classification would promote a legitimate state purpose. Id. Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. Regan v. Taxation With Representation of Washington, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 75 L.Ed.2d 129 (1983). The burden of proof is upon the taxpayer, Streight v. Ragland, 655 S.W.2d 459 (Ark. 1983).

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pension benefits was constitutional, finding a rational basis in the legislation. Reasons advanced for this were (1) the legislature encouraging citizens to seek government employment, thus providing another fringe benefit over those that might be available, and (2) to encourage government pensioners to relocate and/or remain in the state after retirement, 655 S.W.2d at 464.

Plainly, the same reasons support the Missouri scheme of taxation. So long as any rational basis exists, the scheme must be upheld against challenge. Nothing has been provided by the Taxpayers that would suggest that the decision of the Arkansas Supreme Court is incorrect. Based upon that decision, and the failure of the Taxpayers to meet their burden of proof, the classifications in this case do not violate the Equal Protection Clause. This is made even more clear from study of other Missouri cases considering Equal Protection in a taxation context, Associated Industries of

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DECISION

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If you were adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within thirty days after the date this decision was mailed or the date it was deliv-

ered, whichever date was earlier. If any such petition is sent by registered mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail, it will be deemed filed on the date it is received by the Commission.

/s/ Duane Benton
Duane Benton
Director of Revenue

Dated: June 29, 1989

APPENDIX G

Clyde E. Craig
CRAIG & CRAIG, P.C.
Marquette Building
314 N. Broadway, Suite 950
St. Louis, MO 63102

Mr. Duane Benton
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105

June 29, 1989

Re: Joseph E. & Jeanette Schnorbus
Tax Years: 1986, 1987 & 1988

Dear Mr. Benton:

On behalf of Mr. and Mrs. Schnorbus, I hereby protest your denial of claims for refunds for tax years 1986 and 1987 on the basis that the tax is unconstitutional under the State and Federal Constitutions.

Sincerely,

/s/ Clyde E. Craig

Clyde E. Craig

Clyde E. Craig
CRAIG & CRAIG, P.C.
Marquette Building
314 N. Broadway, Suite 950
St. Louis, MO 63102

Mr. Duane Benton
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105

June 29, 1989

Re: Richard L. & Gladys M. Benner
Tax Years: 1986 & 1987

Dear Mr. Benton:

On behalf of Mr. and Mrs. Benner, I hereby protest your denial of claims for refunds for tax years 1986 and 1987 on the basis that the tax is unconstitutional under the State and Federal Constitutions.

Sincerely,

/s/ Clyde E. Craig

Clyde E. Craig

Clyde E. Craig
CRAIG & CRAIG, P.C.
Marquette Building
314 N. Broadway, Suite 950
St. Louis, MO 63102

Mr. Duane Benton
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105

June 29, 1989

Re: Charles & Nora H. Franks
Tax Years: 1986 & 1987

Dear Mr. Benton:

On behalf of Mr. and Mrs. Franks, I hereby protest your denial of claims for refunds for tax years 1986 and 1987 on the basis that the tax is unconstitutional under the State and Federal Constitutions.

Sincerely,

/s/ Clyde E. Craig

Clyde E. Craig

Clyde E. Craig
CRAIG & CRAIG, P.C.
Marquette Building
314 N. Broadway, Suite 950
St. Louis, MO 63102

Mr. Duane Benton
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105

June 29, 1989

Re: Sam A. White
Tax Years: 1986 & 1987

Dear Mr. Benton:

On behalf of Mr. White, I hereby protest your denial of claims for refunds for tax years 1986 and 1987 on the basis that the tax is unconstitutional under the State and Federal Constitutions.

Sincerely,

/s/ Clyde E. Craig

Clyde E. Craig

APPENDIX H

STATE OF MISSOURI
Department of Revenue
Phone No. (314) 751-2633
FAX No. (314) 751-7150

General Counsel's Office
301 W. High Street, Room 670
P.O. Box 475
Jefferson City, MO 65105-0475

Joseph E. Schnorbus
Jeanette Schnorbus
4750 Ambs Road
St. Louis, MO 63128

June 29, 1989

RE: REFUND CLAIMS FOR 1986, 1987 AND 1988

Dear Joseph & Jeanette Schnorbus:

You filed your Missouri combined individual income tax returns and paid the taxes shown thereon for the years at issue. Pursuant to § 143.121, RSMO 1986, you correctly began the computation of Missouri adjusted gross income with the amount you reported as federal adjusted gross income. Included in that amount were certain pension benefits Mr. Schnorbus received from the Teamsters' pension fund. You now seek refunds of the taxes

paid by you which were attributable to those pension benefits.

By your refund claims, you must assert that the Missouri tax system, insofar as it exempted the income of state and local employees from income tax, was unconstitutionally applied to your pension benefits. Therefore, you propose to exclude the pension benefits from Missouri adjusted gross income. You further propose that you should be granted interest on the refunds at the statutory rate.

During the years at issue, the State of Missouri exempted most state and local pensions from income tax. The retirement benefits of Missouri state employees were given a statutory exemption in 1957. However, the retirement benefits of all other employees, including federal government retirees, were subject to tax.

Recently, the U.S. Supreme Court handed down its

opinion in Davis v. Michigan Department of Treasury, 109 S.Ct. 1500 (1989). The Court held that it was improper for a state to exempt the pension income of its own state and local employees from its income tax while taxing that of federal employees. In reaching its conclusion, the Court relied on 4 U.S.C. § 111 and principles of intergovernmental immunity. However, the Court left the question of whether refunds were due to be decided by the individual state courts.

Pursuant to Davis, the Missouri Supreme Court held in Hackman v. Director of Revenue, No. 71620, slip op. (May 25, 1989) held that Missouri's income tax scheme, which exempted state retirement benefits while taxing federal retirement benefits, violated principles of intergovernmental tax immunity. The Court further held that the term "overpayment" contained in the income tax refund statute, § 143.801, included "those income taxes collected illegally under the taxation scheme which violates

principles of intergovernmental tax immunity," Hackman, supra, at 9, and ordered refunds of the taxes in issue.

As stated, the Court's decision in Davis was based on 4 U.S.C. § 111 and principles of intergovernmental tax immunity, and not the equal protection clause of the 14th Amendment. A state may classify taxpayers without violating the equal protection clause as long as the classification is rationally related to achieving a legitimate objective of state government, Exxon Corporation v. Eagerton, 462 U.S. 176, 103 S.Ct. 2296, 76 L.Ed.2d 497 (1983). Furthermore, under this rationality standard, legislation is presumed to be constitutional and the party attacking the legislation has the burden of proving the unconstitutionality of the legislation, Streight v. Ragland, 655 S.W.2d 459 (Ark. 1983). Therefore, the Director of Revenue believes that Missouri taxation of private pension benefits is legal in

the relevant years, and until a court of competent jurisdiction declares the Missouri income tax scheme regarding pension benefits unconstitutional, the Director of Revenue must enforce Missouri's income tax laws.

Based on the foregoing, your claims for refund are denied. If you disagree with this denial of refund, under § 143.841, RSMo 1986, you have 60 days (150 days if the taxpayer is outside the United States) from date of this notice to file with the Director of Revenue a written protest, stating the grounds on which the protest of the denial of refund is based. If you do not file a written protest within 60 days (150 days if the taxpayer is outside the United States), this denial of refund becomes final.

Sincerely,

/s/ George Cox

George Cox
Senior Counsel

GC:RJM/vh

STATE OF MISSOURI
Department of Revenue
Phone No. (314) 751-2633
FAX No. (314) 751-7150

General Counsel's Office
301 W. High Street, Room 670
P.O. Box 475
Jefferson City, MO 65105-0475

Richard L. Benner
Gladys M. Benner
4624 Milentz
St. Louis, MO 63116

June 29, 1989

RE: REFUND CLAIMS FOR 1986 AND 1987

Dear Richard L. & Gladys M. Benner:

You filed your Missouri combined individual income tax returns and paid the taxes shown thereon for the years at issue. Pursuant to § 143.121, RSMo 1986, you correctly began the computation of Missouri adjusted gross income with the amount you reported as federal adjusted gross income. Included in that amount were certain pension benefits Mr. Schnorbus received from the Teamsters' pension fund. You now seek refunds of the taxes paid by you which were attributable to those pension benefits.

By your refund claims, you must assert that the Missouri tax system, insofar as it exempted the income of state and local employees from income tax, was unconstitutionally applied to your pension benefits. Therefore, you propose to exclude the pension benefits from Missouri adjusted gross income. You further propose that you should be granted interest on the refunds at the statutory rate.

During the years at issue, the State of Missouri exempted most state and local pensions from income tax. The retirement benefits of Missouri state employees were given a statutory exemption in 1957. However, the retirement benefits of all other employees, including federal government retirees, were subject to tax.

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and until a court of competent jurisdiction declares the Missouri income tax scheme regarding pension benefits unconstitutional, the Director of Revenue must enforce Missouri's income tax laws.

Based on the foregoing, your claims for refund are denied. If you disagree with this denial of refund, under § 143.841, RSMo 1986, you have 60 days (150 days if the taxpayer is outside the United States) from date of this notice to file with the Director of Revenue a written protest, stating the grounds on which the protest of the denial of refund is based. If you do not file a written protest within 60 days (150 days if the taxpayer is outside the United States), this denial of refund becomes final.

Sincerely,

/s/ George Cox

George Cox
Senior Counsel

GC:RJM/vh

STATE OF MISSOURI
Department of Revenue
Phone No. (314) 751-2633
FAX No. (314) 751-7150

General Counsel's Office
301 W. High Street, Room 670
P.O. Box 475
Jefferson City, MO 65105-0475

Charles Franks
Nora H. Franks
4835 Cherry Blossom
Hazelwood, MO 63042

June 29, 1989

RE: REFUND CLAIMS FOR 1986 AND 1987

Dear Charles & Nora H. Franks:

You filed your Missouri combined individual income tax returns and paid the taxes shown thereon for the years at issue. Pursuant to § 143.121, RSMo 1986, you correctly began the computation of Missouri adjusted gross income with the amount you reported as federal adjusted gross income. Included in that amount were certain pension benefits Mr. Schnorbus received from the Teamsters' pension fund. You now seek refunds of the taxes paid by you which were attributable to those pension benefits.

By your refund claims, you must assert that the Missouri tax system, insofar as it exempted the income of state and local employees from income tax, was unconstitutionally applied to your pension benefits. Therefore, you propose to exclude the pension benefits from Missouri adjusted gross income. You further propose that you should be granted interest on the refunds at the statutory rate.

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/s/ George Cox

George Cox
Senior Counsel

GC:RJM/vh

STATE OF MISSOURI
Department of Revenue
Phone No. (314) 751-2633
FAX No. (314) 751-7150

General Counsel's Office
301 W. High Street, Room 670
P.O. Box 475
Jefferson City, MO 65105-0475

Mr. Sam A. White
7623 Delmar
St. Louis, MO 63130

June 29, 1989

RE: REFUND CLAIMS FOR 1986 AND 1987

Dear Mr. White:

You filed your Missouri combined individual income tax returns and paid the taxes shown thereon for the years at issue. Pursuant to § 143.121, RSMo 1986, you correctly began the computation of Missouri adjusted gross income with the amount you reported as federal adjusted gross income. Included in that amount were certain pension benefits Mr. Schnorbus received from the Teamsters' pension fund. You now seek refunds of the taxes paid by you which were attributable to those pension benefits.

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Sincerely,

/s/ George Cox

George Cox
Senior Counsel

GC:RJM/vh

(2)

Supreme Court, U.S.
FILED
NOV 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-738

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOSEPH E. and JEANETTE SCHNORBUS,
RICHARD L. and GLADYS M. BENNER,
CHARLES and NORA H. FRANKS, and
SAM WHITE
Petitioners,

vs.

DIRECTOR OF REVENUE, STATE OF MISSOURI,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the State of Missouri

RESPONDENT'S BRIEF IN OPPOSITION

DUANE BENTON
Counsel of Record
Director of Revenue
P.O. Box 311
Jefferson City, MO 65105-0311
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(314) 751-2633

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

QUESTIONS PRESENTED

1. Whether the Missouri Supreme Court properly found that the State had a rational basis for exempting governmental retirement benefits while taxing nongovernmental retirement benefits?

2. Whether the Missouri Supreme Court properly found that the State had a legitimate interest in attracting and retaining government employees which justified the classifications of governmental retirees, versus nongovernmental retirees?

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No. 90-738

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOSEPH E. and JEANETTE SCHNORBUS,
RICHARD L. and GLADYS M. BENNER,
CHARLES and NORA H. FRANKS, and
SAM WHITE

Petitioners,

VS.

DIRECTOR OF REVENUE, STATE OF MISSOURI,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the State of Missouri

RESPONDENT'S BRIEF IN OPPOSITION

The Director of Revenue, State of Missouri, submits this Brief in Opposition to the Petition for Certiorari filed by Joseph E. and Jeanette Schnorbus, et al. Respondent submits that Petitioners fail to raise a substantial federal question, and as the second question presented is predicated wholly upon state law grounds, it occasions no basis for review by this Court.

STATEMENT OF THE CASE

Petitioners claim this case arises as a result of this Court's decision in *Davis v. Michigan Department of Treasury*, ___ U.S. ___, 109 S.Ct.

1500 (1989). In *Davis*, this Court held that Michigan's taxation of annuities of retired referral employees (while exempting state and municipal retirees) violated 4 U.S.C. § 111 as well as the intergovernmental tax immunity doctrine embodied in the Supremacy Clause.

Like Michigan, Missouri gave a preference to state and local annuitants at the expense of federal annuitants. In *Hackman v. Director of Revenue*, 771 S.W.2d 77 (Mo. banc 1989), *cert. denied*, ___ U.S. ___, 110 S.Ct. 718 (1990), the Missouri Supreme Court followed the decision in *Davis*, ordering refunds to be paid to those eligible under Missouri's income tax refund statute.

Pursuant to § 143.801, RSMo 1986, these Petitioners filed claims for refund with the Respondent, asserting that Missouri unfairly discriminated between state-and-federal-government pensions and private pensions, wherein the latter was taxed and the former exempted (either by state statute or court decision). On June 29, 1989, the Director denied the refund claims (Petitioners' Appendix H). Pursuant to statute, the denials were protested (Petitioners' Appendix G). On June 29, 1989, the Director denied the protests (Petitioners' Appendix F) and the Petitioners appealed to the Missouri Administrative Hearing Commission on July 14, 1989 (Petitioners' Appendix D). Acting on a stipulated record (Petitioners' Appendix E), the Administrative Hearing Commission ruled for Respondent on September 7, 1989 (Petitioners' Appendix C). On June 19, 1990, the Missouri Supreme Court affirmed the decision of the Administrative Hearing Commission, denying the refunds, 790 S.W.2d 241 (Mo. banc 1990).

REASONS FOR DENYING THE WRIT

I.

Petitioners first argue that the denial of these refunds is a violation of the Equal Protection Clause of the United States Constitution, Amendment XIV.[1] In *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), this Court noted that the standard of review for equal protection claims made under the United States Constitution is the "lenient standard of rationality that this Court has traditionally applied to considering equal protection challenges to regulation of economic and commercial matters." 462 U.S. at 195-6.

In *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973), this Court stated:

> The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. *Harper v. Virginia Board of Elections*, 383 U.S. 663, 666. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.

410 U.S. at 359 (footnote omitted).

After reciting this standard of review, the Missouri Supreme Court held in the case below:

> This case is similar to *Streight v. Ragland*, 280 Ark. 206, 655 S.W.2d 459 (1983), where the Arkansas Supreme Court held there was a rational basis for excluding federal and state pensions but not private pensions from state taxation. The court found that

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[1] Petitioners also assert that the decision of the Missouri Supreme Court violates the Equal Protection Clause of the Missouri Constitution. This, of course, is not reviewable by this Court. *Eisenstadt v. Baird*, 405 U.S. 438, 442 (1972).

> the legislature may have wanted to encourage pensioners to either remain in Arkansas or relocate to Arkansas. *Id.* 655 S.W.2d at 464. Here, the Missouri General Assembly may have desired to create an additional benefit for potential employees to be attracted to governmental service in Missouri or for government employees to remain in Missouri after their retirement. Additionally, the Director of Revenue showed by affidavit that the cost to the state of exempting private pensions would be over 68 million dollars per year and thus demonstrated an economic basis not to exempt nongovernmental employees' retirement benefits. Regardless of the actual justification for the statute, there is a rational basis for the implementation of exemption of governmental retirement benefits, and the state has a legitimate interest in giving an exemption to former governmental employees.

790 S.W.2d at 243.

The Missouri Supreme Court's decision is also consistent with the Seventh Circuit Court of Appeals' decision in *Clark v. United States*, 691 F.2d 837 (7th Cir. 1982). The *Clark* court held that 5 U.S.C. § 8340 did not violate equal protection by mandating cost of living adjustments for federal, but not state or private, pensioners.

Respondent submits that the decision of the Missouri Supreme Court was correct. Indeed, this Court noted in *Davis*, *supra*, that Michigan's scheme of discrimination in favor of state retirees over federal retirees did have a rational basis, but under the stricter standard established by 4 U.S.C. § 111, that rational basis was not sufficient to save the Michigan scheme, 109 S.Ct. at 1508. Petitioners' statement that this Court could not find a rational basis for Michigan's scheme (Petition pp. 15-16) is simply incorrect. As this Court held, 4 U.S.C. § 111 required Michigan to meet a stricter standard than mere rational basis. This same federal statute is not implicated by this case.

The Missouri Legislature could rationally believe that permitting the exemption of government pension benefits would serve as an incentive to enter into and remain employed in government service a laudable and permissible goal of the Missouri Legislature. The

legislature could also reasonably believe that exempting government pensions was a fringe benefit designed to offset compensation lower than that available in the private sector.

Accordingly, Respondent submits that the Missouri Supreme Court correctly found that there was a rational basis for Missouri's practice of exempting certain government pensions and imposing a tax on certain private pensions. No invidious discrimination exists, and this issue does not merit review by this Court.

II.

Petitioners also suggest that this Court should review that portion of the Missouri Supreme Court's decision that construes article X, section 3 of the Missouri Constitution. Clearly, an interpretation of the Missouri Constitution by the Missouri Supreme Court is binding upon this Court and does not present a subject for review by this Court, *Eisenstadt v. Baird*, 405 U.S. 438, 442 (1972). Respondent notes that the Missouri Supreme Court specifically rejected this argument, 790 S.W.2d at 242.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of the State of Missouri should be denied.

Respectfully submitted,

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